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09/671,607	09/28/2000	Abel J. Rautenbach	01359.00002	7211

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EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/671,607

Applicant(s)

RAUTENBACH, ABEL J.

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/19/03.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Applicant has canceled claims 1-23. Pending claims are 24-36.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 24-35** are rejected under 35 U.S.C. 103(a) as being unpatentable over Du Vall et al. (US 3933147).

For claims 24 & 26, Du Vall et al. disclose a device capable of immobilizing an animal (human) comprising an elongated probe 10 having a rear end and a front end for insertion into the anal canal R of the animal (col. 7, line 19), the probe having first 14 and second 16 electrodes spaced from each other on the outer surface thereof and electrical conductors 18,20 extending from the electrodes and adapted for connection to an electrical power source 36. In addition, Du Vall et al. teach a current and a potential of between about 1 V and 11 V (col. 3, lines 36, 59-68 & col. 4, lines 1-10). However, Du Vall et al. are silent about an electric current of between about 250 mA and 400 mA and a frequency of between about 20 and 50 Hz. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ various electric current and frequency in the device of Du Vall et al., depending on the degree of electrical shock one wishes to electrocute the animal with and the number of times to apply the shock to produce the desire result.

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For claim 25, as mentioned, Du Vall et al. teach a potential between 2 and 10 Volts (col. 4, lines 1-10).

For claim 27, the probe of Du Vall et al. as shown in fig. 2 has a right circular cylindrical configuration.

For claim 28, the probe of Du Vall et al. as shown in fig. 2 has a front end with a tapered rounded tip.

For claim 29, the first electrode 14 of Du Vall et al. as shown in fig. 2 has an annular configuration and is located proximate the front end of the probe where the rounded tapering tip located, and the second electrode 16 has an annular configuration and is located proximate the first electrode as shown in fig. 2.

For claim 30, the first and second electrodes 14,16 are separated by an annular groove in the probe as shown in fig. 2.

For claim 31, the second electrode 16 of Du Vall et al. extends from a position proximate the first electrode 14 along the probe (col. 3, lines 5-8). It is not clear if "along the probe" can be to the rear. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to extend the second electrode of Du Vall et al. to the rear of the probe in order to provide a larger electrical conducting area to cover all area of the probe.

For claim 32, col. 6, lines 60-68 of Du Vall et al. teaches another probe 70 with electrodes 72 being constructed out of stainless steel.

For claims 33 & 34, Du Vall et al. disclose a method of supplying electric currents to an animal such as human, which method is also capable of immobilizing the animal

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and comprising the steps of inserting the probe (as described in the above) into the anal canal of the animal (col. 7, line 19); applying the current (as described in the above) to the animal, the current having a potential between about 1 and 11 Volts (as described in the above). However, Du Vall et al. are silent about a frequency of between about 20 and 50 Hz and a current strength of between about 250 and 400 mA. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ various electric current and frequency in the device of Du Vall et al., depending on the degree of electrical shock one wishes to electrocute the animal with and the number of times to apply the shock to produce the desired result.

For claim 35, see claim 25 above.

4. **Claim 36** is rejected under 35 U.S.C. 103(a) as being unpatentable over Du Vall et al. (US 3933147) in view of Lines (FR 2532150 A). Du Vall et al. teach a device which applies electrical current to the rectum area of an animal such as a human and Lines teaches applying electrical current to an animal such as a sheep (as shown in fig. 2) which effect the rectum area (see abstract). Therefore, it would have been an obvious substitution of functional equivalent to one having ordinary skill in the art at the time the invention was made to employ the method of Du Vall et al. in an ungulate animal as taught by Lines, since the subject of study is an animal (human or sheep) and the function of the device is to provide electrical stimulation in the rectum area (either by immobilization or relaxing).

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection. However, certain comments regarding Du Vall et al. will be addressed herein.

*Applicant argued that Du Vall et al. does not disclose a device for immobilizing an animal by insertion in the anal canal of the animal.* The device of Du Vall et al., although as applicant state is for strengthening muscle, is capable immobilizing an animal such as a human. The device of Du Vall et al. has similar structure as the present invention as claimed, then the device of Du Vall et al. is capable of performing the same. The probe of Du Vall et al. is inserted in the rectum as stated in col. 7, line 19. Although it may be for strengthening muscle in the rectum, if the device of Du Vall et al. was to be inserted in the rectum and the same electrical current with a potential between 1 and 11 Volts as claimed by applicant was to be applied, then why would it not immobilize the animal because it is the same electrical current applied?

*Applicant argued that Du Vall et al. do not disclose electrical current of between 250 mA and 400 mA and a frequency of between about 20 to 50 Hz.* It would have been obvious to one of ordinary skill in the art to apply various current and frequency amounts, depending on the degree of electrical shock one wishes to electrocute the animal with and the number of times to apply the shock to produce the desire result. In addition, the voltage taught by Du Vall et al. is similar to the voltage claimed by applicant, therefore, voltage relates with amperage so it would have been a reasonable

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interpretation that Du Vall et al. use the same current, i.e. 250 and 400 mA, to produce a potential between about 1 to 11 V.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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Patent Examiner, GAU 3643  
May 29, 2003



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